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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,609	11/28/2000	Michael Peter Rumsewicz	100-43	2077

7590

12/18/2003

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EXAMINER

COULTER, KENNETH R

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 12/18/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/673,609

Applicant(s)

RUMSEWICZ ET AL.

Examiner

Kenneth R Coulter

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 15-24, 28, 34, 37 and 42-46 is/are rejected.
- 7) ☒ Claim(s) 5-7, 9-14, 25-27, 29-33, 35, 36 and 38-41 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Specification

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 112

2. Claim 18 recites the limitation "said interface unit" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1 – 4, 8, 15 - 24, 28, 34, 37, and 42 – 46 are rejected under 35 U.S.C. 102(e) as being disclosed by Tonchev et al. (U.S. Pat. No. 6,324,570) (Prioritized Delivery and Content Auto Select System).

4.1 Regarding claim 1, Tonchev discloses a method of controlling access to a server by a client in a network, said method comprising the steps of:

monitoring resource usage of said server (Abstract; col. 2, lines 13 – 24; col. 6, lines 23 – 26 and 52 - 65);

allowing a connection of said client to pass to said server where said connection forms part of an active session wherein said connection forms part of an active session if at least one previous connection from said client has passed to said server within a predetermined time interval (col. 2, lines 13 – 24; col. 6, lines 23 – 26 and 52 - 65); and

allowing or rejecting a new connection of another client to pass to said server according to an admission control scheme (col. 2, lines 13 – 24; col. 6, lines 23 – 26 and 52 - 65).

4.2 Per claim 2, Tonchev teaches that the step of allowing or rejecting is based on said resource usage of said server (col. 6, lines 23 – 26; col. 3, lines 43 - 47).

4.3 Regarding claim 3, Tonchev discloses the step of searching for an active session of said client and admitting a connection of said client to pass to said server if there is an active session for said client (col. 2, lines 13 – 24; col. 6, lines 23 – 26 and 52 - 65).

4.4 Per claim 4, Tonchev teaches that said admission control scheme includes the step of determining a congestion level in response to said monitoring step (col. 2, lines 13 – 24; col. 6, lines 23 – 26 and 52 - 65).

4.5 Regarding claims 8 and 15, the rejection of claims 1 – 4 (paragraphs 4.1 – 4.4 above) under 35 USC 102(e) applies fully.

4.6 Per claims 16 – 24, 28, 34, 37, and 42 – 46, the rejection of claims 1 – 4 (paragraphs 4.1 – 4.4 above) under 35 USC 102(e) applies fully.

In addition, Tonchev teaches a table of active sessions (Fig. 2; col. 6, lines 42 - 49).

Allowable Subject Matter

Claims 5 – 7, 9 – 14, 25 – 27, 29 – 33, 35, 36, and 38 – 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R Coulter whose telephone number is 703 305-8447. The examiner can normally be reached on 5 4 9.

Art Unit: 2141

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 703 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-9700.

KENNETH R. COULTER

PRIMARY EXAMINER



krc